IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.522 OF 2002

Rakhamichand Vardichand Jain ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr.Shreekant V.Gavand for Applicant.

Ms.P.H.Kantharia, A.P.P. for Respondent.

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CORAM: A.M.KHANWILKAR, J.

FEBRUARY 28, 2005.

P.C.

1. Heard Counsel for the parties.

2. This Revision takes exception to the direction issued by the Sessions Court while acquitting the present Applicant/accused No.6, that the gold chip (lagad) VMR article No.13 be confiscated to the State.

3. The argument is that, as the gold chip was recovered from the possession of the Applicant, the Trial Court ought to have directed return of that property to the Applicant. It is also argued that none of the co-accused claimed ownership of the gold chip, for which reason, the same ought to have been returned to the Applicant, as it was recovered from his possession.

4. The aforesaid argument, however, overlooks the stand taken by the Applicant in his statement under Section 313 of the Criminal Procedure Code. Nowhere he has claimed ownership of the subject gold chip (lagad) VMR article No.13. [I have recorded this opinion on the basis of the statement under Section 313 of the Applicant, certified copy whereof, was produced at the time of argument, which is taken on record (see Question Nos.34 and 35)]. If it is so, the fact that none of the co-accused have claimed ownership of the said gold chip and that, it was recovered from the possession of the Applicant during investigation, will make no difference. Only if the Applicant was to claim

ownership of the gold chip in question, he would be justified in establishing his claim in respect of the said article and not otherwise. Hence, no interference is warranted. Dismissed.

A.M.KHANWILKAR, J.